C. G. RHINEHART

IBLA 83-881 Decided October 17, 1983

Appeal from decision of Nevada State Office, Bureau of Land Management, declaring unpatented mining claims abandoned and void. N MC 87477 through N MC 87481.

Affirmed.

1. Federal Land Policy and Management Act of 1976: Recordation of Affidavit of Assessment Work or Notice of Intention to Hold Mining Claim -- Mining Claims: Recordation

   Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located on Federal lands must file a notice of intention to hold the claim or evidence of performance of assessment work prior to Dec. 31 of each calendar year. The evidence of assessment work or the notice of intention to hold the mining claim must be filed both in the office where the location notice for the claim is recorded and in the proper office of the Bureau of Land Management. This requirement is mandatory, not discretionary. Filing of evidence of assessment work only in the county recording office does not constitute compliance with the recordation requirements of the Federal Land Policy and Management Act of 1976, or those in 43 CFR 3833.2-1.

2. Federal Land Policy and Management Act of 1976: Assessment Work -- Mining Claims: Assessment Work

   Where the requirement of filing proof of assessment work or a notice of intention to hold the claim applies, such filing must be made within each calendar year, i.e., on or after Jan. 2, and on or before Dec. 30.

3. Federal Land Policy and Management Act of 1976: Recordation of Mining Claims and Abandonment -- Mining Claims: Abandonment

   The conclusive presumption of abandonment which attends the failure to file an instrument required by 43 U.S.C.

> § 1744 (1976) is imposed by the statute itself. A matter of law, it is self-operative and does not depend upon any act or decision of an administrative official. In enacting the statute, Congress did not invest the Secretary with authority to waive noncompliance with the statute, or to afford claimants any relief from the statutory consequences.

APPEARANCES: C. G. Rhinehart, pro se.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

By decision of August 5, 1983, the Nevada State Office, Bureau of Land Management (BLM), declared the unpatented Ruby Mariea Molly, and the R & R #1 through #4 lode mining claims, N MC 87477 through N MC 87481, abandoned and void because no proof of labor or notice of intention to hold the claims for 1982 was filed with BLM by December 30, 1982, as required by section 314 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744 (1976), and 43 CFR 3833.2.

Appeal has been taken by C. G. Rhinehart who states that the annual assessment work was performed in the latter part of August for the assessment year ending September 1, and in the early part of September for the succeeding assessment year, and that both proofs of labor were then recorded in Humboldt County, Nevada, and copies were sent to BLM.

The case records reflect that proofs of labor were filed with BLM in 1979 and 1981. The proof of labor for 1980 was filed with BLM September 5, 1979. There is no evidence of the receipt of any proof of labor for 1982.

[1] Section 314 of FLPMA requires the owner of an unpatented mining claim located on Federal lands to file both in the office where the location notice is of record and in the proper office of BLM evidence of assessment work performed on the claim or a notice of intention to hold the claim, prior to December 31 of every calendar year. The statute also provides that failure to file such instruments within the prescribed time periods shall be deemed conclusively to constitute an abandonment of the claim. As no proof of labor or notice of intention to hold the claims for 1982 was filed timely with BLM, BLM properly deemed the claims to be abandoned and void. Shamrock Mining, Inc., 75 IBLA 110 (1983); J & B Mining Co., 65 IBLA 335 (1982); Margaret E. Peterson, 55 IBLA 136 (1981).

[2] The practice of appellant to do his assessment work back-to-back, that is, in August for one assessment year, and in September for the following assessment year, does not comport with the interpretation which the Board has placed on the recordation requirements of FLPMA. As we held in Erickson Placers, Inc., 63 IBLA 60 (1982), and James V. Joyce (On Reconsideration), 56 IBLA 327 (1981), the requirement of filing a proof of labor or a notice of intention to hold in section 314 of FLPMA is construed to mean that such filing be made within each calendar year, i.e., on or after January 2, and on or before December 30.

[3] The conclusive presumption of abandonment which attends the failure to file an instrument required by 43 U.S.C. § 1744 (1976) is imposed by the statute itself, and would operate without the regulations. See Northwest Citizens for Wilderness Mining Co., Inc. v. Bureau of Land Management, Civ. No. 78-46 (D. Mont. June 19, 1979). A matter of law, the conclusive presumption is self-operative and does not depend upon any act or decision of an administrative official. In enacting the statute, Congress did not invest the Secretary of the Interior with authority to waive or excuse noncompliance with the statute, or to afford claimants any relief from the statutory consequences. Lynn Keith, 53 IBLA 192, 88 I.D. 369 (1981).

The regulations define "file" to mean "being received and date stamped by the proper BLM office." 43 CFR 1821.2-2(f); 43 CFR 3833.1-2(a). Filing is accomplished only when a document is delivered to an received by the proper BLM office within the proper time period. The filing requirement is imposed by statute, and this Board has no authority to waive it. Lynn Keith, supra.

BLM has stated that it did not receive the 1982 proof of labor for the claims within the proper time period. Appellant has not shown anything to the contrary. Therefore, it must be found that BLM was not acting improperly in its decision declaring the claims abandoned and void under the terms of FLPMA.

We point out that BLM should have taken action against these claims when no proof of labor or notice of intention to hold was filed within the calendar year 1980, as the filing of a proof of labor on September 5, 1979, did not satisfy the statutory requirements.

Appellant may wish to consult with BLM about the possibility of relocating these claims.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

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Douglas E. Henriques
Administrative Judge

We concur:

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Gail M. Frazier
Administrative Judge

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Will A. Irwin
Administrative Judge